

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-2003

KEVIN RUSSO,

Appellant.

v.

AMERICAN AIRLINES, INC.; ALLIED PILOTS ASSOCIATION

On Appeal from the United States District Court
for the District of New Jersey
(D. C. No. 07-cv-03173)
District Judge: Hon. Jose L. Linares

Submitted under Third Circuit LAR 34.1 (a)
on February 5, 2009

Before: RENDELL and ROTH, Circuit Judges
and PADOVA*, Senior District Judge

(Opinion filed: July 10, 2009)

O P I N I O N

*Honorable John R. Padova, Senior United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

ROTH, Circuit Judge:

Kevin Russo appeals the final order of the United States District Court for the District of New Jersey, granting summary judgment for appellees, American Airlines, Inc. and Allied Pilots Association. We exercise plenary review over a grant of summary judgment. *E.g., Dee v. Borough of Dunmore*, 549 F.3d 225, 229 (3d Cir. 2008). We view the facts in a light most favorable to Russo and apply the same standard that guided the District Court. *See id.* Because the parties are familiar with the facts, we will describe them only as necessary to explain our decision. For the reasons discussed below, we will affirm.

_____Russo argues that (1) this Court should “modif[y]” Supreme Court precedent “to provide an exception” to the statute of limitations for his claim and that (2) equitable tolling applies to toll the statute of limitations. The District Court exercised jurisdiction under 28 U.S.C. § 1331; we have jurisdiction under 28 U.S.C. § 1391.

Under the Railway Labor Act, 45 U.S.C. § 151 *et seq.*, a plaintiff can assert a “hybrid” claim against both his union for breaching its duty of fair representation and his employer for breaching its duties under the collective-bargaining agreement. *West v. Conrail*, 481 U.S. 35, 36 (1987) (internal quotation marks omitted); *see Childs v. Pa. Fed’n Bhd. Maint. Way Employees*, 831 F.2d 429, 433 (3d Cir. 1987). The statute of limitations for a hybrid claim is six months. *See West*, 481 U.S. at 38; *Childs*, 831 F.2d at 433. When a union represents an employee in an arbitration proceeding, the hybrid claim

accrues, and the six-month period starts running, when “the arbitration board denies the employee’s claim.” *Bensel v. Allied Pilots Ass’n*, 387 F.3d 304, 307 (3d Cir. 2004).

Russo concedes that he filed suit well outside the six-month period, but urges us to create an exception to Supreme Court precedent that would allow his suit to be timely. This argument fails because we, of course, do not modify binding Supreme Court precedent.

Russo also argues that the District Court erred in declining to equitably toll the limitations period. We apply “[t]he doctrine of equitable tolling . . . ‘sparingly.’”

Podobnik v. U.S. Postal Serv., 409 F.3d 584, 591 (3d Cir. 2005) (citation omitted)

(quoting *Nat’l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002)). There are three principal situations in which equitable tolling is appropriate:

(1) where the defendant has actively misled the plaintiff respecting the plaintiff’s cause of action, and that deception causes non-compliance with an applicable limitations provision; (2) where the plaintiff in some extraordinary way has been prevented from asserting his rights; or (3) where the plaintiff has timely asserted his or her rights mistakenly in the wrong forum.

Id. But before a plaintiff can argue that his case involves one of those three situations, he must satisfy a threshold requirement: “‘running throughout the equitable estoppel cases is the obligation of the plaintiff to exercise due diligence to preserve his or her claim.’” *Id.* at 592 (quoting *Robinson v. Dalton*, 107 F.3d 1018, 1023 (3d Cir. 1997)).

Russo’s argument fails because he did not exercise due diligence to preserve his claim. He concedes that he chose to avert his attention from this matter for about sixteen months, focusing instead on his divorce proceedings.

The District Court did not err in granting summary judgment for appellees. For the reasons set forth above, we will affirm the judgment of the District Court.